



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF L-A-I-M-C-

DATE: DEC. 31, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a church, seeks to employ the Beneficiary as a pastor. It requests his classification under the second-preference, immigrant category as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, "EB-2" category allows a U.S. organization to sponsor a foreign national for lawful permanent resident status to work in a position requiring at least a master's degree, or a bachelor's degree followed by five years of experience.

After the filing's initial grant, the Acting Director of the Nebraska Service Center revoked the petition's approval and denied the Petitioner's following motion to reconsider. The Director concluded that the Petitioner did not demonstrate that an authorized person signed the petition and the accompanying certification from the U.S. Department of Labor (DOL) on the church's behalf. Finding that the Petitioner willfully misrepresented the signatures' validity, the Director invalidated the labor certification. The Director also found that the Petitioner should have disclosed a prior relationship between the signatory and a church official.

On appeal, the Petitioner submits additional evidence and asserts that the Director misunderstood facts and reached erroneous conclusions.

Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as an advanced degree professional generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain DOL certification. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for an offered position, and that employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If the DOL approves an offered position, an employer must next submit the labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204

of the Act, 8 U.S.C. § 1154. Among other things, USCIS determines whether a beneficiary meets the DOL-certified, job requirements of a position. If USCIS grants a petition, a foreign national may finally apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

At any time before a beneficiary obtains lawful permanent residence, however, USCIS may revoke a petition's approval for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. If supported by the record, the erroneous nature of an approval may justify revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

USCIS may issue a notice of intent to revoke (NOIR) if the unexplained and un rebutted record would have warranted a petition's denial. *Matter of Esteime*, 19 I&N Dec. 450, 451 (BIA 1987). USCIS may revoke a petition's approval if a petitioner's response does not resolve the revocation grounds stated in the NOIR. *Id.* at 451-52.

II. SIGNATURES ON THE PETITION AND LABOR CERTIFICATION

A petitioner must sign its petition, certifying under penalty of perjury that the filing and all supporting evidence are true and correct. 8 C.F.R. § 103.2(a)(2). For a corporation like the Petitioner, an executive officer or a professional human resources employee may sign on its behalf. USCIS Policy Memorandum PM-602-0134.1, *Signatures on Paper Applications, Petitions, Requests, and Other Documents Filed with U.S. Citizenship and Immigration Services* 5 (Feb. 15, 2018), <https://www.uscis.gov/legal-resources/policy-memoranda> (last visited Dec. 14, 2018). Another employee may also sign if he or she "has the authority to legally bind and commit the corporation" to the relevant terms and attestations. *Id.* Similarly, an "authorized representative" of a corporation may sign a labor certification application on its behalf. The term "authorized representative" means "an employee of the employer whose position or legal status authorizes the employee to act for the employer in labor certification matters." 20 C.F.R. § 656.3.

Here, copies of the Petitioner's federal tax return for 2015 identify its chief executive officer (CEO)/senior pastor as its sole employee.¹ The Form I-140 and labor certification, however, indicate that a different pastor signed the documents. As of the NOIR's issuance, the record did not establish the filings' signatory as an authorized representative of the Petitioner. The Director therefore properly questioned the Petitioner's signatures on the petition and labor certification.

The Petitioner's appellate evidence, however, establishes its authorization of the signatory. The record indicates that, from the filing of the labor certification application in December 2015 until the petition's submission in July 2016, the CEO/senior pastor frequently left the United States to care for

¹ The Petitioner, a nonprofit religious corporation, is exempt from paying federal income taxes. It has, however, filed annual information returns. *See* U.S. Internal Revenue Serv. (IRS), "Annual Exempt Organization Return: Who Must File," <https://www.irs.gov/charities-non-profits/annual-exempt-organization-return-who-must-file> (last visited Dec. 14, 2018).

his spouse, who was battling a serious illness. Pursuant to the church's constitution, he appointed the signatory to fulfill the CEO/senior pastor's duties in his absence. The Petitioner submitted a statement from the CEO/senior pastor, along with copies of his spouse's medical records and the church constitution. See USCIS Policy Memorandum PM-602-0134.1, *supra*, at 6 (stating that evidence such as bylaws and a letter from a corporate officer may demonstrate an employee's authorization to legally bind a petitioning corporation with his or her signature). The record therefore establishes the validity of the Petitioner's signatures on the petition and labor certification.

III. INVALIDATION OF THE LABOR CERTIFICATION

Unless accompanied by an application for Schedule A designation or documentation of a beneficiary's qualifications for a shortage occupation, a petition for an advanced degree professional must include a valid, individual labor certification. 8 C.F.R. § 204.5(k)(4)(i). USCIS may invalidate a labor certification after its issuance upon a finding of "fraud or willful misrepresentation of a material fact involving the labor certification application." 20 C.F.R. § 656.30(d).

As outlined by the Board of Immigration Appeals, a material misrepresentation requires that one willfully makes a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. See *Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

Here, the Director found that the Petitioner willfully misrepresented its authorization of the signatory on the labor certification. The Director also found that the Petitioner knowingly concealed a prior relationship between its CEO/senior pastor and the signatory. The Director noted that, in petition proceedings, the Petitioner identified the signatory as a long-time church member and that the CEO/senior pastor signed a prior Form I-140 petition for him on behalf of a university where the CEO/senior pastor serves as president.

The record, however, does not support the alleged misrepresentations on the labor certification. As discussed in section II, the Petitioner demonstrated that it authorized the signatory to serve as its pastor and to sign the labor certification application on its behalf. The application therefore does not misrepresent the signatory's title or authorization. There is also no bar on the authorized signatory having a prior relationship with the Petitioner. On the contrary, an authorized signatory must have a relationship with the Petitioner in order to serve as the signatory on the labor certification and that prior relationship does not affect the validity of the Petitioner's job offer to the Beneficiary.

The record does not support the Petitioner's misrepresentation of a material fact involving the labor certification application. We will therefore withdraw the Director's finding of willful misrepresentation of a material fact and reinstate the labor certification.

IV. INTENTION TO EMPLOY IN THE OFFERED POSITION

The Petitioner has overcome the stated revocation grounds. As of the petition's approval, however, the record did not establish the Petitioner's required intention to employ the Beneficiary in the offered position.

A petitioner must be "desiring and intending to employ [a foreign national] within the United States." Section 204(a)(1)(F) of the Act. A petitioner must intend to employ a beneficiary under the terms of an accompanying labor certification. *Matter of Izdebska*, 12 I&N Dec. 54, 55 (Reg'l Comm'r 1966) (affirming a denial where, contrary to the terms of an accompanying labor certification, a petitioner did not demonstrate its intention to employ a beneficiary as a domestic worker on a full-time, live-in basis). For labor certification purposes, the term "employment" means "[p]ermanent, full-time work." 20 C.F.R. § 656.3.

Here, the labor certification states the Petitioner's intention to employ the Beneficiary in the full-time, offered position of pastor. The position's job duties include: "[p]ray[ing] and promot[ing] spirituality;" "[p]repar[ing] and deliver[ing] sermons or other talks;" and "[o]rganiz[ing] and lead[ing] regular religious services and education programs."

The record, however, does not indicate that the Petitioner requires a full-time pastor. The church's 2015 tax return states that its CEO/senior pastor - its sole employee at the time - spent only 75 percent of his time on pastoral activities. Also, in response to the NOIR, the CEO/senior pastor stated that the signatory who performed the senior pastor's duties from December 2015 to July 2016 worked only on weekends. In addition, the Form I-140 describes the offered position as a "new" position. Thus, the Beneficiary would presumably work with the CEO/senior pastor, not replace him. The record does not establish the Petitioner's need for one full-time pastor. It therefore also does not establish its need for two.

The Petitioner did not receive an opportunity to respond to our doubts about its intention to employ the Beneficiary as a full-time pastor. We will therefore remand the matter. On remand, the Director should inform the church of the evidentiary shortcomings and afford it a reasonable opportunity to respond. Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

V. CONCLUSION

The record on appeal establishes that an authorized representative signed the petition and accompanying labor certification on the Petitioner's behalf. The record also does not support the labor certification's invalidation based on the church's willful misrepresentation of a material fact. The Petitioner, however, did not demonstrate its intention to employ the Beneficiary in the offered position on a full-time basis.

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ORDER: The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.

FURTHER ORDER: The ETA Form 9089, case number A-15342-49897, is reinstated.

Cite as *Matter of L-A-I-M-C-*, ID# 2033111 (AAO Dec. 31, 2018)